

CHAPTER Env-Wt 300 PERMITS AND OTHER AUTHORIZATIONS; CONDITIONS APPLICABLE  
TO ALL WORK IN JURISDICTIONAL AREAS

PART Env-Wt 305 PURPOSE AND APPLICABILITY

Env-Wt 305.01 Purpose. The purpose of this chapter is to:

- (a) Identify dredge, fill, and construction activities that are:
  - (1) Allowed by RSA 482-A without a permit or notification;
  - (2) Prohibited or limited by RSA 482-A;
  - (3) Allowed by RSA 482-A provided the specified conditions are met, including notification;
  - (4) Allowed under a lower scrutiny approval (LSA);
  - (5) Allowed under an expedited permit (EXP); or
  - (6) Allowed only if a standard permit is obtained;
- (b) Establish conditions that apply to all dredge, fill, and construction activities, whether or not allowed by RSA 482-A with or without notification or covered by a standard permit, an EXP, or an LSA is required or obtained;
- (c) Establish procedures and criteria for filing a notification or registration for an LSA;
- (d) Establish procedures and criteria for applying for an EXP;
- (e) Establish procedures and criteria for filing an application for a standard permit;
- (f) Establish procedures and criteria for the department's review of submissions and decisions;
- (g) Establish post-issuance requirements, including but not limited to permit acceptance, recordation, duration, transfer, and procedures and criteria for permit amendments;
- (h) Establish procedures for emergency situations; and
- (i) Establish the criteria and procedures for suspending, revoking, or modifying an LSA, EXP, or standard permit.

Env-Wt 305.02 Applicability. This chapter shall apply to any person who undertakes or proposes to undertake any dredge, fill, or construction activities, or any combination thereof, in a jurisdictional area.

PART Env-Wt 306 ACTIVITIES REQUIRING A PERMIT OR OTHER AUTHORIZATION

Env-Wt 306.01 Activities Eligible For a Lower Scrutiny Approval (LSA). Any project classified as low impact<sup>1</sup> shall be eligible for a lower scrutiny approval (LSA) as described in Env-Wt 309 unless:

- (a) The project includes activities that do not comply with all standard conditions for the project as specified in Env-Wt 307;
- (b) The project includes activities that:
  - (1) Are prohibited under RSA 482-A; or
  - (2) Do not follow applicable best management practices; or
- (c) Any work was commenced prior to the effective date of the LSA.

---

<sup>1</sup> "Low impact" is proposed to replace "minimum impact"; those terms and the term "CAT1" are used interchangeably in these rules.

Env-Wt 306.02 Activities Eligible for an Expedited Permit (EXP). Any project classified as CAT1/low impact shall be eligible for an expedited permit (EXP) as described in Env-Wt 310 unless:

- (a) The project includes activities that are prohibited under RSA 482-A; or
- (b) Any work was commenced prior to the effective date of the LSA.

Env-Wt 306.03 Activities Requiring a Standard Permit. A standard permit shall be obtained from the department prior to undertaking any dredging, filling, or construction activity in any jurisdictional area that:

- (a) Is not prohibited or exempted by RSA 482-A;
- (b) Is not subject to a statutory permit by notification (SPN); and
- (c) Is not eligible for an LSA under Env-Wt 306.01 or an EXP under Env-Wt 306.02.

#### PART Env-Wt 307 CONDITIONS APPLICABLE TO ALL ACTIVITIES IN JURISDICTIONAL AREAS

##### Env-Wt 307.01 Purpose and Applicability.

- (a) The purpose of this part is to establish conditions that apply to all dredging, filling, and construction activities in jurisdictional areas, regardless of the primary purpose of such activities.
- (b) This part shall apply to any activity being conducted in any jurisdictional area, regardless of whether a standard permit, LSA, SPN, registration, or waiver is required or has been obtained for the activity.

Env-Wt 307.02 Requirements for Coverage Under State General Permits. In order to be in compliance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (US ACE) shall comply with all conditions of the applicable general permit, available at <http://www.nae.usace.army.mil/portals/74/docs/regulatory/StateGeneralPermits/NH/NH%20General%20Permit%2018August2017.pdf>.

##### Env-Wt 307.03 Protection of Water Quality Required.

- (a) No activity shall be conducted in such a way as to cause or contribute to any violation of:
  - (1) The surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700;
  - (2) The ambient groundwater quality standards established under RSA 485-C; or
  - (3) Any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.
- (b) Natural vegetation and filter strips around wetlands and surface waters shall be retained and maintained wherever practicable.
- (c) All work shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using techniques described in the New Hampshire Stormwater Manual, Volume 3, Erosion and Sediment Controls During Construction (December 2008).
- (d) Water quality control measures shall:
  - (1) Be used as appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to jurisdictional areas;
  - (2) Be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508;

**NOTE:** All cross-references subject to verification.

- (3) Be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction;
- (4) Be capable of:
  - a. Preventing erosion;
  - b. Collecting sediment and suspended and floating materials; and
  - c. Filtering fine sediment.
- (5) Remain in place until all disturbed surfaces are stabilized; and
- (6) Removed upon completion of work if designed and installed as temporary methods.
- (e) Any sediment collected by water quality control measures shall be:
  - (1) Removed with sufficient frequency to prevent the depth of the sediment from reaching one-third the height of the barrier; and
  - (2) Placed in an upland location in a manner that prevents its erosion into a surface water or wetland.
- (f) All exposed soils and other fills shall be permanently stabilized at the earliest practicable date.
- (g) A coffer dam or a turbidity curtain shall be used to enclose a dredging project conducted in or along the shoreline of a bog, marsh, lake, pond, stream, river, creek, or any other surface water.
- (i) The person in charge of construction equipment shall:
  - (1) Inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands;
  - (2) Repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands;
  - (3) Maintain appropriate oil spill kits and diesel fuel spill kits on site so as to be readily accessible at all times during construction; and
  - (4) Train each equipment operator in the use of the kits.
- (j) Equipment shall be staged and refueled in upland areas only, where spills will not reach groundwater, surface water, or wetlands.

Env-Wt 307.04 Protection of Fisheries and Breeding Areas Required. Work shall be done so as to:

- (a) Avoid discharges of dredged material or placement of fill material in spawning or nursery areas or in amphibian and migratory bird breeding areas during spawning or breeding seasons, as applicable;
- (b) Suspend activities that might discharge sediment to spawning or nursery areas or to amphibian and migratory bird breeding areas during spawning or breeding seasons, as applicable;
- (c) Avoid impacts to spawning or nursery areas or to amphibian and migratory bird breeding areas or minimize such impacts to the maximum extent practicable during all times of the year;
- (d) Avoid disturbance to migratory fish or waterfowl breeding areas and spawning areas;
- (e) Maintain cold water fish dissolved oxygen concentrations as specified in Env-Wq 1703.07;
- (f) Maintain temperatures as specified in Env-Wq 1703.11; and

**NOTE:** All cross-references subject to verification.

- (g) Protect high quality waters as specified in Env-Wq 1708.06.

Env-Wt 307.05 Protection Against Invasive Species Required.

- (a) Prior to the installation of swamp mats, the mats shall be inspected for and cleaned of all vegetative matter.
- (b) Equipment to be used in surface waters shall be completely free of all aquatic plants and all exotic aquatic species of wildlife as defined in RSA 487:16, I-a.
- (c) All applicable requirements of RSA 487:15-25 shall be met.

Env-Wt 307.06 Protection of Rare, Threatened or Endangered Species and Critical Habitat. No activity shall impact a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat under the:

- (a) Federal Endangered Species Act, 16 U.S.C. §1531 *et seq.*; or
- (b) State Endangered Species Conservation Act, RSA 212-A.

Env-Wt 307.07 Protection and Restoration of Vegetated Shorelines.

- (a) Natural vegetated shorelines along nontidal and tidal surface waters and wetlands shall be maintained to the maximum extent practicable to protect water course stability, flood storage areas, water quality, wildlife breeding areas, fishery spawning areas, and critical habitat.
- (b) Any shoreline vegetation disturbed during a project shall be re-established as specified in Env-Wq 1400 relative to a planting matrix for shoreland restoration .

Env-Wt 307.08 Protection of Designated Prime Wetlands.

- (a) Water quality and environmental minimization measures shall be in place to ensure that functions and values of prime wetlands are protected.
- (b) Duly-established 100-foot buffers shall not be disturbed unless specifically authorized under RSA 482-A.

Env-Wt 307.09 Shoreline Structures. No structure shall be built over public trust surface waters, except that structures may be constructed over public trust surface waters:

- (a) To provide docking for watercraft; or
- (b) To provide seating for dining establishments in:
  - (1) Areas exempted from RSA 483-B pursuant to RSA 483-B:12; and
  - (2) Historic commercial tidal areas as allowed under Env-Wt 600.

Env-Wt 307.10 Dredging Activity Conditions. The following conditions shall apply to all dredging activities, in addition to all other applicable conditions in this part:

- (a) No dredging shall occur that would create violations of any set-backs specified in:
  - (1) RSA 483-B relative to protecting water quality; or
  - (2) Env-Wq 1000 relative to septic systems;

- (b) Work shall be done during low flow and in the dry unless a dredge dewatering, diversion, or cofferdam plan has been approved as part of the project;
- (c) Turbidity controls shall be:
  - (1) Installed prior to construction and maintained during construction such that no turbidity escapes the immediate dredge area; and
  - (2) Remain in place until suspended particles have settled and water at the work site has returned to normal clarity;
- (d) Dredged materials shall be disposed of out of jurisdictional areas, unless other disposition is specifically permitted pursuant to (f), below;
- (e) Dredged materials to be stockpiled in uplands shall be dewatered in sedimentation basins that are:
  - (1) Contained within turbidity controls that prevent turbid water from leaving the basins; and
  - (2) Located outside of any jurisdictional area;
- (f) If an applicant wishes to use dredged materials as part of the proposed project or dispose of dredged materials in a jurisdictional area, the applicant shall specifically request authorization to do so as part of the application filed pursuant to Env-Wt 312;
- (g) In non-tidal waters, no dredging shall occur:
  - (1) Between October 1 and March 31 for any fish migration or larval setting area of cold water fish; or
  - (2) In March or April for any area that is habitat for rainbow smelt.
- (h) In addition to the limitations on tidal dredging in Env-Wt 600, no dredging shall occur in tidal waters during a fish migration or larval setting stage of shellfish, which is between November 15 and March 15, unless otherwise authorized by the New Hampshire Fish and Game Department;
- (i) In addition to the limitations on tidal dredging in Env-Wt 600, dredging projects in tidal waters shall be designed and implemented to ensure that there is no disruption of tidal flushing, namely the influx or outflow of water that is associated with the normal ebb and flow of the tide;
- (j) Dredging shall not impede fish migrations or interfere with spawning areas for fish; and
- (k) Dredging shall not disturb contaminated layers of sediment unless dredging of such sediments is specifically identified in the application and authorized in the issued permit. If such dredging is authorized, the department shall include such protective conditions in the permit as are necessary to ensure that the contaminated sediment is properly managed.

Env-Wt 307.11 Filling Activity Conditions. The following conditions shall apply to all temporary and permanent filling activities, in addition to all other applicable conditions in this part:

- (a) Fill shall be clean sand, gravel, rock, or other material that:
  - (1) Meets the project's specifications for its use; and
  - (2) Does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used;
- (b) Limits of fill shall be marked by construction fence or equivalent prior to commencement of work to ensure that fill does not spill over or erode into any area where filling is not authorized;
- (c) Slopes shall be immediately stabilized by a method specified in Env-Wq 1506 or Env-Wq 1508,

**NOTE:** All cross-references subject to verification.



as applicable, to prevent erosion into adjacent wetlands or surface waters;

- (d) No fill shall be done to achieve setbacks to septic systems specified in Env-Wq 1000;
- (e) Fill shall be not placed so as to direct flows onto adjacent or down-current land;
- (f) Swamp mats, construction mats, and corduroy roads shall not be deemed temporary fill for new authorizations unless they are removed immediately upon work completion;
- (g) Authorized temporary fill other than swamp mats, construction mats, and corduroy roads shall be placed on geotextile fabric laid on preconstruction wetland grade;
- (h) Temporary fill shall be:
  - (1) Removed as soon as it is no longer needed; and
  - (2) Disposed of at an upland location in a manner that prevents its erosion into a surface water or wetland;
- (i) Wetlands and surface waters shall be restored to pre-impact conditions after removal.
- (j) Swamp mats shall be:
  - (1) Properly installed, not dragged into position; and
  - (2) Removed immediately upon the completion of work;
- (k) No fill shall take place in Atlantic white cedar swamps, calcareous fens, or special resource areas.

Env-Wt 307.12 Work Site Restoration. The following conditions shall apply to restoring all work sites, in addition to all other applicable conditions in this part:

- (a) Upon completion of construction, all disturbed wetland areas shall be stabilized;
- (b) Any seed mix used shall contain only plant species native to New England;
- (c) Unless otherwise authorized, any trees cut in an area of authorized temporary disturbance shall be cut at ground level with the roots left intact, to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area; and
- (d) Unless otherwise authorized, wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation, by replacing the pre-construction soil and vegetation in their pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.

Env-Wt 307.13 Property Line Setbacks.

- (a) As required by RSA 482-A:3, XIII(a), all boat docking facilities shall be at least 20 feet from the abutting property line, whether in tidal or in non-tidal waters.
- (b) Subject to (c), below, no dredging, filling, or construction activity that is not covered by (a), above, that is covered by an LSA or for which an EXP or permit is required shall occur within 10 feet of an abutting property line.
- (c) Subject to (d), below, if an applicant wishes to extend an activity that is covered by (b), above, closer than 10 feet to an abutting property line, the applicant shall obtain written consent from the affected abutter.

**NOTE:** All cross-references subject to verification.

(d) The applicant for a bank stabilization project shall not be required to obtain consent from the affected abutter if the project will not be successful unless it extends closer to the property line.

(e) The department shall increase the setback to property lines if it determines that the location proposed for an activity:

- (1) Represents a danger to other waterfront activities due to its size or character, or both, being inconsistent with the size and character of the surrounding area;
- (2) Is likely to create a navigation hazard due to its size or proximity to other existing legal structures; or
- (3) Is likely to interfere with an abutter's access to or use of the abutter's property to a degree that is more than mere inconvenience.

(f) If the department determines pursuant to (e), above, that a larger set-back is required, the department shall increase the set-back only the distance required to abate the danger, hazard, or interference, as applicable.

Env-Wt 307.14 Rock Removal. The following conditions shall apply to removal of rocks, in addition to all other applicable conditions in Env-Wt 500 or this part:

- (a) No rocks shall be blasted or otherwise removed unless doing so is necessary to provide public access or to abate an immediate navigable hazard;
- (b) No rocks shall be removed during fish spawning;
- (c) Subject to (e), below, rocks removed from the bed of a surface water shall be relocated within 10 feet to 20 feet of their current location and at a similar depth unless otherwise specifically allowed pursuant to (d), below;
- (d) If an applicant cannot relocate rocks that need to be removed as required by (c), above, the applicant shall specifically request authorization to remove the rocks to another location as part of the application filed pursuant to Env-Wt 311; and
- (e) Rocks that are necessary to protect fish spawning areas or critical wildlife habitat in shallow streams or lakes shall not be relocated.

Env-Wt 307.15 Logging or Forestry Activities.<sup>2</sup> The following conditions shall apply to all logging and forestry activities, in addition to all other applicable conditions in Env-Wt 500 or this part:

- (a) Impacts to surface waters and wetlands from logging activities shall be avoided or minimized as specified in Env-Wt 313.04;
- (b) All skid trails, truck roads, and log landings shall be:
  - (1) Located far enough away from surface waters and wetlands that waterborne soil particles will settle out before reaching the surface waters or wetlands; and
  - (2) Laid out and constructed using appropriate erosion control devices, as explained in New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations, UNH Cooperative Extension, 2016, available at [https://extension.unh.edu/resources/files/Resource000247\\_Rep266.pdf](https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf) (Logging BMPs), so that the grade approaching a surface water or wetland is broken and surface run-off is dispersed.

---

<sup>2</sup> Delete this based on inclusion in Env-Wt 500?

(c) Culverts, bridges, pole fords, or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the Logging BMPs except when road and stream banks are sufficiently frozen to avoid rutting or destabilization.

(d) Crossings shall be removed when logging is completed in the area serviced by the crossing, except that corduroy crossings at locations where there is no defined channel may be left in place.

(e) All permanent crossings on truck roads shall be adequate to handle a 25-year flood, the peak flow that statistically would occur once in 25 years.

Env-Wt 307.16 Use of Heavy Equipment in Wetlands. The following conditions shall apply to the use of heavy equipment in wetlands, in addition to all other applicable conditions in Env-Wt 500 or this part:

(a) Mobile heavy equipment working in wetlands shall not be stored, maintained, or repaired in wetlands;

(b) Where construction requires the operation of heavy equipment in wetlands, the equipment shall:

(1) Either have low ground pressure, namely less than 3 psi, or not be located directly on wetland soils and vegetation; or

(2) Be placed on swamp mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation;

(c) Construction equipment shall be inspected daily for leaking fuel, oil, and hydraulic fluid prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands;

(d) The permittee shall:

(1) Maintain appropriate oil/diesel fuel spill kits on site that are readily accessible at all times during construction; and

(2) Ensure that each operator has been trained in the use of the kits;

(e) All refueling of equipment shall occur outside of surface waters or wetlands during construction;

(f) Machinery shall be staged and refueled in upland areas only; and

(g) Faulty equipment shall be repaired prior to entering any jurisdictional area.

(h) Swamp mats shall be placed in the wetland from the upland or from equipment positioned on swamp mats if working within a wetland.

(i) Swamp mats shall not be dragged into position.

Env-Wt 307.17 Adherence to Approved Plans Required. For any project for which plans were submitted and an LSA, EXP, or standard permit was issued, all work on the project shall be done in accordance with the approved plans.

Env-Wt 307.18 Unpermitted Activities. The following activities shall be deemed to not have a permit:

(a) Any work done that:

(1) Is in an area that is subject to the jurisdiction of the federal Clean Water Act for which an LSA, EXP, or standard permit has not been obtained; or

(2) Causes impacts to jurisdictional areas that are not authorized by an SPN, LSA, EXP, or standard permit;

**NOTE:** All cross-references subject to verification.



(b) Any work that is subject to an LSA, EXP, or standard permit that is carried out prior to receiving the applicable authorization; and

(c) Any work that is subject to an SPN that does not comply with all requirements for the SPN.

#### PART Env-Wt 308 ACTIVITIES ALLOWED OR PROHIBITED BY STATUTE

Env-Wt 308.01 Activities Exempted By Statute from Permit Requirement. A permit under RSA 482-A shall not be required prior to undertaking any of the following activities in any jurisdictional area:

(a) As specified in RSA 482-A:3, IV(a) and as clarified in Env-Wt 308.02(a) and (b), the replacement or repair of existing structures in or adjacent to any waters of the state that does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp;

(b) As specified in RSA 482-A:3, IV(b), subject to the conditions listed in (c), below, the maintenance, repair, replacement, or modification so as to preserve usefulness of:

- (1) Man-made non-tidal drainage ditches;
- (2) Roadside and railroad ditches;
- (3) Detention basins, ponds, and wetlands that have been legally constructed to collect, convey, treat, or control storm water and spring run-off;
- (4) Legally constructed ponds on active farms;
- (5) Erosional features caused by proximate human activity;
- (6) Fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief; and
- (7) Aggregate wash ponds, sluiceways, and other legally constructed man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water;

(c) As specified in RSA 482-A:3, IV(b), the activities listed in (b), above, shall be undertaken without a permit only if:

- (1) The exempted facility, area, or feature was not constructed as mitigation under a wetlands permit or as part of a settlement agreement;
- (2) The exempted facility, area, or feature is not extended into any jurisdictional area;
- (2) Dredged materials are deposited outside of all jurisdictional areas;
- (3) Wetlands or surface waters outside the limits of the exempted facility, area, or feature are not disturbed or degraded;
- (4) Best management practices are followed; and
- (5) The work does not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.

(d) As specified in RSA 482-A:3, IV(c), the cleaning of legally constructed culverts as necessary to preserve their usefulness, provided:

- (1) The conditions stated in (c), above, are met; and
- (2) Any repair, replacement, or modification of a culvert is in accordance with RSA 482-A:3, XVI;

(e) As specified in RSA 482-A:3, VII and as clarified in Env-Wt 308.02(c), the removal of sand that has blown or drifted onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or that has blown or drifted in, on, or around buildings or other structures owned by the person;

(f) As provided in the definition of “structure” in RSA 482-A:2, IX, the construction or installation of a bench, a landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that:

- (1) The construction or installation is done without regrading or recontouring the shoreline; and
- (2) No portion of the bench, landing, or stairs is over water; and

(g) As provided in RSA 210:9, II, the destruction or removal of a beaver dam or the installation of beaver pipes or beaver fences as defined in RSA 210:9, II-a by a landowner, the landowner’s agent, or any town or municipal or state official or employee on property under that person’s control to protect property, public highways, or bridges from damage or submersion, subject to the following conditions:

- (1) Removal of the dam shall be done in a gradual manner such that it does not allow a sudden release of impounded water so as to cause erosion, siltation, or a safety hazard downstream;
- (2) No machinery shall enter the water or otherwise create any disturbance by filling or dredging in or adjacent to surface waters, wetlands, or the banks thereof; and
- (3) All dredged materials shall be placed out of jurisdictional areas.

Env-Wt 308.02 Clarification of Statutory Exemptions.

(a) If a structure that will be repaired or replaced pursuant to RSA 482-A:3, IV(a) has a portion located below the water surface at time of such repair or replacement and the below-water portion will also be repaired or replaced, a permit shall be obtained prior to undertaking any work on the below-water portion.

(b) If a permit is required by (a), above, the applicant shall submit, with the application for the permit, proof that the structure the applicant is proposing to repair or replace is an existing legal structure as defined in Env-Wt 101.

(c) Sand that has blown or drifted from a sand dune onto a lawn, driveway, walkway, parking area, storage area, or boat ramp, or that has blown or drifted into, onto, or around any structure may be removed by the owner without a permit pursuant to RSA 482-A:3, VII.

(d) A structure shall qualify for a statutory exemption only if the structure:

- (1) Was legally constructed; and
- (2) Has been maintained so as to continue its intended use when originally constructed, and not abandoned or overgrown.

(e) An erosional feature, such as a small erosion gully or rill, may be smoothed and filled and stabilized as necessary to protect water quality where adjacent to a developed area, provided that if the erosional feature is within the area approved to be impacted by a permit, the work shall comply with the approved plans and permit.

(f) A legally-constructed ditch may be cleaned out and maintained to remove deposited silt or sediment, but shall not be lowered to drain or dewater adjacent wetland or surface waters.

(g) All exempt activities shall be done in accordance with all applicable conditions in Env-Wt 307.

Env-Wt 308.03 Activities Prohibited or Limited By Statute.

(a) As specified in RSA 482-A:3, VIII and IX, no person shall operate or ride any mechanized or off highway recreational vehicle on any sand dune in the state of New Hampshire except for:

- (1) Police vehicles or fire vehicles;
- (2) Vehicles used in cases of emergency;
- (3) Authorized maintenance vehicles when performing maintenance duties; and
- (4) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

(b) As specified in RSA 482-A:16, no person shall place or cause to be placed any fill in any area below the mean high water level of any public waters, or below the artificially-created high water level of publicly-owned bodies of water in this state, with the intent or with the effect of creating or forming filled land adjacent to such bodies of water without obtaining a grant of right from the governor and executive council in accordance with RSA 482-A:17.

(c) As specified in RSA 482-A:21, I, no person shall excavate, remove, or dredge any bank, flat, marsh, swamp, or lake bed that lies below the natural mean high water level of any natural ponds of more than 10 acres without obtaining a grant of right from the governor and executive council in accordance with RSA 482-A:22.

(d) As specified in RSA 482-A:26, I, no person shall construct any structure suitable for use as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.

(e) As specified in RSA 482-A:26, II, no person shall convert or modify any existing structure in order to make the structure suitable as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body, subject to the exceptions specified in RSA 482-A:26, III.

Env-Wt 308.04 Statutory Permits-by-Notification (SPNs). The following activities may be undertaken in any jurisdictional area without obtaining an LSA, EXP, or standard permit provided the conditions identified below are met and the required notice is given in accordance with Env-Wt 308.05:

(a) As provided in RSA 482-A:3, IV-a, the installation of a temporary seasonal dock on any lake or pond, provided that all requirements of RSA 482-A:3, XII, as reprinted in Appendix E, are met;

(b) As provided in RSA 482-A:3, V, timber harvesting that meets the requirements for CAT1 activities, provided that the person undertaking the timber harvesting complies with all requirements specified in RSA 482-A:3, V, as reprinted in Appendix E:

(c) As provided in RSA 482-A:3, XI(b), panning for gold or other minerals in sand or gravel stream beds, provided that:

- (1) No mechanical equipment is used;
- (2) No digging is done in the banks of the river or stream;
- (3) All applicable conditions in Env-Wt 307 are met; and
- (4) Prior written permission is obtained from the landowner;

(d) As provided in RSA 482-A:3, XII, the construction and maintenance of recreational trails, provided that all requirements of RSA 482-A:3, XII, as reprinted in Appendix E, are met;

(e) As provided in RSA 482-A:3, XV, the maintenance and repair by utility providers of existing utility services within existing rights of way, provided that all requirements of RSA 482-A:3, XII, as reprinted in Appendix E, are met; and

(f) As provided in RSA 482-A:3, XVI, the repair or replacement of culverts or stream crossing structures, including culverts up to and including 48 inches in diameter or the functional hydraulic equivalent, provided that all requirements of RSA 482-A:3, XII, as reprinted in Appendix E, are met, subject to Env-Wt 309.05 through Env-Wt 309.07.

Env-Wt 308.05 Activation of an SPN.

(a) The person responsible for a project that includes an activity listed in Env-Wt 308.04 shall provide the required notification by submitting the following to the department on or with the applicable information collection document as listed in Env-Wt 308.06, table 308-1:

- (1) The information specified in the applicable statutory provision; and
- (2) Proof that the project conforms to the statutory requirements and limitations, including but not necessarily limited to the following:

- a. The results and identification number of an NHB DataCheck, including any recommendations that are necessary for the project to proceed as an SPN; and
- b. If the activity is within 50 feet of a prime wetland or a duly-established 100-foot buffer, a map to scale of the designated prime wetland or duly-established 100-foot buffer with the location of the activity clearly delineated.

(b) The person responsible for the activity shall:

- (1) Sign and certify the notification in accordance with Env-Wt 311.11; and
- (2) Affirm that:
  - a. The project is not located in a special resource area;
  - b. All recommendations of the NHB and the New Hampshire fish and game department (NHF&G) will be followed; and
  - c. The person responsible for the activity is aware of limits of the SPN and applicable Best Management Practices (BMPs) for the project and will adhere to both.

(c) The person responsible for the project shall notify the clerk of each town or city in which work on the project under the SPN will occur, by providing the clerk with a copy of the notice submitted to the department.

(d) If the department determines that an SPN form is complete and that the project as described meets the requirements for an SPN, the department shall post on its website:

- (1) A notice that the notification form was complete and that the project as described conforms with all applicable requirements; and
- (2) The effective date of the SPN, which shall be the date the notification is posted by the department on its website.

(e) If the department determines that an SPN form is incomplete or that the project as described does not meet the requirements for an SPN, the department shall send a written notice to the person responsible for the project that:

- (1) Identifies each deficiency; and

(2) Informs the person that in order to proceed under the SPN, the person must:

- a. File a complete and correct notification form, if the project as described appears to meet the requirements for an SPN; or
- b. Obtain an LSA, EXP or standard permit, if the project as described does not appear to meet the requirements for an SPN.

(f) If a person receives a notice under (e), above, and proceeds with the work covered by the SPN without first filing a complete and correct notification form or obtaining a different type of authorization, then:

- (1) All work done shall be deemed to have been done without a permit or exemption; and
- (2) The person shall file an application for an after-the-fact standard permit.

Env-Wt 308.06 Documents to Collect Information to Activate an SPN. The information required to activate an SPN specified in Env-Wt 308.05 shall be submitted on or with the applicable document identified in table 308-1, below:

Table 308-1: Document to Collect Information Required to Activate an SPN

Cross-Reference	Type of SPN	Document
Env-Wt 308.04(a)	Temporary seasonal dock	[insert name / # when available]
Env-Wt 308.04(b)	Timber harvesting	[insert name / # when available]
Env-Wt 308.04(c)	Mineral panning	[insert name / # when available]
Env-Wt 308.04(d)	Recreational trails	[insert name / # when available]
Env-Wt 308.04(e)	Utilities	[insert name / # when available]
Env-Wt 308.04(f)	Culvert repair/replacement	[insert name / # when available]

Env-Wt 308.06 Post-Notification Requirements for SPNs.

(a) Prior to commencing the work covered by the SPN, the person responsible for the project shall post at the site :

- (1) A copy of the SPN posted by the department; and
- (2) If applicable, the notice for forestry projects.

(b) Within 10 days following completion of the work covered by the SPN, the person responsible for the project shall submit to the department confirmation of completion of the project, either by paper copy or electronically, with dated, labeled, photograph(s), mounted on 8½" x 11" sheets if submitted in paper copy, or digital photo(s) if submitted electronically, depicting each area impacted by the work.

Env-Wt 308.07 Conditions for SPNs. All work done pursuant to an SPN shall be subject to the following conditions:

- (a) The work shall be done in compliance with all applicable conditions in Env-Wt 307; and
- (b) Any work done in shoreland covered by RSA 483-B, the comprehensive water quality protection act, shall comply with all applicable conditions established therein.



## PART Env-Wt 309 LOWER SCRUTINY APPROVALS (LSAs)

Env-Wt 309.01 Applicability. This part shall apply to those activities that can be undertaken without an EXP or a standard permit.

Env-Wt 309.02 Projects Conditionally Authorized By Rule. As authorized by RSA 482-A:11, VII, the following activities may be undertaken without obtaining a standard permit or an EXP and without notifying the department or registering the activity with the department, provided the conditions stated in Env-Wt 307 and the conditions stated below are met:

(a) Mowing or other cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, or white pine swamp, subject to the following conditions:

- (1) The roots of the vegetation shall not be disturbed;
- (2) The ground shall be frozen or sufficiently dry to avoid making ruts;
- (3) If the work is done when the ground is frozen, all disturbed area shall be stabilized once thawed; and
- (4) The project shall not be located in an area having very poorly drained soils or in a special resource area;

(b) Placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as applicable;

(c) Temporary placement of a fabric barrier on the bottom of a lake or pond by or under the direction of the department for the control of exotic aquatic weeds as authorized by RSA 487:17, subject to the following conditions:

- (1) The area shall not exceed 10,000 square feet (SF); and
- (2) The project shall not be located in a marsh of any size or a special resource area as defined in Env-Wt 100;

(d) Installation of a stream crossing in an ephemeral stream that is not connected to any jurisdictional area;

(e) Use of piezometers, staff gauges, flow meters, or hand tools such as augers or tile spades for:

- (1) Determining limits of jurisdictional wetlands;
- (2) Determining stability of shoreline for data to be included in a wetlands application;
- (3) Educational purposes; or
- (4) Monitoring hydrology;

(g) Hand raking of leaves or other organic debris from the shoreline or lake bed, subject to the following conditions:

- (1) All raking shall be done in an area exposed by drawdown or other low-water conditions;
- (2) The raking shall not disturb vegetative roots; and
- (3) The raking shall be limited to an area no larger than 900 SF;

(h) The planting of non-invasive vegetation to enhance wetlands using hand-held, non-motorized tools; and

**NOTE:** All cross-references subject to verification.

(i) Any stream crossing built landward of the top of one bank to landward of the top of the opposite bank so as not to impact jurisdictional areas.

Env-Wt 309.03 Activity Registrations For Below-Surface Work.

(a) As authorized by RSA 482-A:11, VII, the activities specified in (b), below, may be undertaken after registering as specified in Env-Wt 309.05 provided:

(1) The conditions listed in Env-Wt 309.03 are met, together with any project-specific conditions or limitations specified in (b), below;

(2) The entity undertaking the project provides the landowner, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted not less than 5 working days prior to commencing the work; and

(3) If the entity undertaking the project does not own the property on which the work will take place, the entity provides the department and the local governing body with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access.

(b) The registrations established by this section shall apply to the following activities:

(1) Drilling geotechnical borings during the design of a public project or for a dug-in basin for a boathouse as provided in Env-Wt 519;

(2) Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the design of a public project;

(3) Drilling test wells or installing monitoring wells for purposes of exploring for public water supplies or soil or groundwater contamination;

(4) Drilling drinking water wells for public or private use; and

(5) Undertaking site remediation activities approved by the department pursuant to Env-Or 600, subject to the following additional conditions:

a. The information submitted to the department on which the approval for the activities was issued shall have:

1. Clearly identified all jurisdictional areas; and

2. Clearly described the activities that will occur within jurisdictional areas; and

b. The entity undertaking the activities shall provide the department's wetlands bureau and the local governing body with written notification of the commencement of work as soon as practicable, but in no event later than 5 working days after commencing work.

Env-Wt 309.04 Conditions For Activity Registrations Established In Env-Wt 309.03. The following conditions shall apply to any activity undertaken pursuant to Env-Wt 309.03:

(a) Any vehicle or equipment used for access to the site or for drilling or excavating shall be:

(1) Skid-mounted, portable, or otherwise designed to have low ground contact pressure; and

(2) Operated in a manner that minimizes disturbance to jurisdictional areas;

(b) The number of ruts shall be minimized;

(c) Ruts shall not exceed one foot in depth;

- (d) Drilling operations shall be managed so as to have no adverse impact on water quality;
- (e) Drill holes shall:
  - (1) Not exceed 8 inches in diameter; and
  - (2) Be permanently cased, if the hole is for a well that will remain in place, or back-filled with drill cuttings or with clean material or grout if the hole is temporary;
- (f) Drill cuttings and excavated materials not used for back-fill shall be removed from jurisdictional areas;
- (g) Equipment shall be operated and maintained to prevent spillage of fluids, including but not limited to oil, gas, antifreeze, and hydraulic fluids;
- (h) No filling of wetlands shall be allowed except to smooth or regrade ruts or to use vegetative cuttings as part of a base layer for an access road;
- (i) All impacts to jurisdictional areas shall be temporary and, upon completion of the work, all rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
- (j) Any drilling in surface waters shall be done:
  - (1) Using equipment operated from a barge, from the ice, or from adjacent uplands; and
  - (2) So as to not violate any water quality standards;
- (k) No work shall be done in surface waters except as provided in (j), above; and
- (l) No work shall be done in a marsh of any size or in a special resource area.

Env-Wt 309.05 Registrations for Activities Covered By Env-Wt 309.03. The person responsible for undertaking an activity covered by Env-Wt 309.03 shall register the activity by providing the following to the department in writing:

- (a) The name, mailing address, and web site URL, if any, of the person responsible for the activity and, if the person is other than an individual, the name, daytime telephone number, and email address of an individual who will serve as the person's point of contact for the activity;
- (b) The type of activity to be undertaken;
- (c) The location of the activity; and
- (d) The estimated start date for the activity and the anticipated length of time the activity will take to complete.

Env-Wt 309.06 Routine Roadway/Railway Maintenance Activities Not Subject to SPN. Routine roadway and railway maintenance activities that are not covered by the SPN described in Env-Wt 308.04(f) but are included in "Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire", published by the New Hampshire department of transportation, dated 2017 ("Routine Roadway Maintenance BMPs") may be undertaken without obtaining an EXP or standard permit provided:

- (a) The person responsible for the activities (responsible party) files a registration form as specified in Env-Wt 309.08;
- (b) The activities are conducted in accordance with the Routine Roadway Maintenance BMPs;
- (c) The total project does not impact more than 50 linear feet or 3,000 sq. ft. of jurisdictional area; and

- (d) All conditions in Env-Wt 309.07 are met.

Env-Wt 309.07 Conditions for Routine Roadway and Railway Maintenance Activities. Any person undertaking routine roadway or railway maintenance activities pursuant to Env-Wt 309.05 shall comply with the following:

- (a) No work shall occur on property not owned by the responsible party unless the responsible party also:
  - (1) Provides copies of a signed written release from each owner of the property on which the work will be done to the department with the notification form; or
  - (2) Provides a completed notification form at least 5 calendar days prior to start of work to each owner of property that will be impacted by the work;
- (b) No work shall be done in excess of the activities described in the Routine Roadway Maintenance BMPs;
- (c) All work shall comply with the Routine Roadway Maintenance BMPs and the applicable provisions of Env-Wt 307;
- (d) No work shall be done:
  - (1) In excess of the activities described in the Routine Roadway Maintenance BMPs;
  - (2) In or adjacent to prime wetlands;
  - (3) Within ¼-mile of a New Hampshire river designated pursuant to RSA 483; or
  - (4) In bogs, marshes, tidal wetlands, undisturbed tidal buffer zone, or sand dunes; and
- (e) A copy of the completed registration form shall be posted in a prominent location at the worksite prior to initiation of work at the worksite.

Env-Wt 309.08 Registrations for Routine Roadway and Railway Maintenance Activities.

- (a) To register the activities, the responsible party shall provide the following to the department on or with a Notification of Routine Roadway and Railway Maintenance Activities form that has been signed and certified as specified in Env-Wt 311.11:
  - (1) The name and mailing address of the responsible party;
  - (2) The name, title, and daytime telephone number of an individual who has been authorized by the responsible party to serve as the department's point of contact for the activities;
  - (3) The location of the proposed activity(ies), including:
    - a. The name of the road and the numbers of the nearest utility poles on either side of the location; and
    - b. The name of the stream or, if unnamed, the name of the surface water to which the stream is tributary;
  - (4) A description of the proposed activity(ies);
  - (5) Reference to the section of the Routine Roadway Maintenance BMPs that applies to the activity;
  - (6) A copy of the USGS topographical map on which the location of the proposed activity(ies) is clearly marked;
  - (7) Sketches of the proposed construction design, if applicable; and

**NOTE:** All cross-references subject to verification.

(8) Color photographs of the proposed work site showing existing structures, surrounding land, and the subject surface water.

(b) The responsible party shall provide a copy of the completed notification form and all attachments thereto to the local governing body and to the municipal conservation commission, if any, at least 5 calendar days prior to commencement of work.

#### PART Env-Wt 310 SUBMISSIONS FOR EXPEDITED PERMITS (EXPs)

Env-Wt 310.01 EXP Submission Requirements. To obtain an EXP, the applicant shall submit to the department the following, on or with an application form:

- (a) The applicant's name, mailing address, and daytime telephone number;
- (b) Information on the proposed project location, including:
  - (1) The location of proposed project by street address and tax map and lot number;
  - (2) A copy of town tax map showing the location of the proposed project in relation to abutters;
  - (3) A list of abutters' names and mailing addresses to cross-reference with the tax map;
  - (4) A copy of the appropriate US geological survey map with the property and project located;
  - (5) Name of water body, wetland, or other jurisdictional area where work is proposed;
  - (6) Original photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact;
  - (7) Whether the proposed project location is in a special resource area; and
  - (8) The results and identification number of the NHB DataCheck;
- (c) Information on the proposed project, including:
  - (1) Identification of the applicable CAT1 provision in Env-Wt 500;
  - (2) A brief description of the project, outlining the scope of work to be performed, including the detailed dimensions of the size of the impacts in jurisdictional areas;
  - (3) Identification of the type of landform to be affected, including the type of wetland and type of soils, from the list in Env-Wt [insert xref when available];
  - (4) An accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on jurisdictional areas detailing the precise location of the project;
  - (5) The number of linear feet of shoreline frontage for projects located on water bodies;
  - (6) The linear distance of the project from abutting property boundaries;
  - (7) As applicable:
    - a. The type of dock construction;
    - b. The diameter of culvert(s) to be used for road or driveway crossings;
    - c. The additional information specified in Env-Wt [insert xref] for low impact agricultural applications;
    - d. Plans for maintenance of retaining walls, as specified in Env-Wt [insert xref];
    - e. Specifications and plans for maintenance of rip-rap, as required by Env-Wt [insert xref];

**NOTE:** All cross-references subject to verification.



- (d) A signed statement by the applicant certifying that:
  - (1) The proposed project meets the conditions and limits of the applicable low impact project rule;
  - (2) All abutters have been notified;
  - (3) If the project is to repair or replace a docking structure, the docking structure is an existing legal structure;
  - (4) The proposal is the alternative with the least adverse impact to jurisdictional areas, as required by Env-Wt [insert xref];
  - (5) The project is not located in a special resource area; and
  - (6) The applicant is aware of the limits of the EXP and understands and will comply with all conditions in the EXP and all applicable conditions in Env-Wt 307;
- (e) The application fee for minimum impact projects as required by RSA 482-A:3, I;
- (f) A signed statement by the county conservation district or certified wetland scientist, where required by the appropriate CAT1 project rule, certifying compliance with all conditions of that rule; and
- (g) A signed statement by the municipal conservation commission certifying that the commission:
  - (1) Waives its right to intervene per RSA 482-A:11, III;
  - (2) Recommends approval of the application; and
  - (3) Believes that the application and the submitted plans accurately represent the proposed project.

Env-Wt 310.02 EXP Review Procedures.

- (a) The department shall review the application for an EXP for completeness and compliance with department rules within 10 working days of receipt.
- (b) If the application is complete and complies with applicable requirements, the department shall issue an EXP and post the information on its website within one working day of determining that the application was complete and in compliance.
- (c) If the application is not complete or if the project covered by the application does not comply with applicable requirements, the department shall:
  - (1) Deny the application within one working day of determining that the application was incomplete or not in compliance; and
  - (2) Inform the applicant in writing of the reason(s) for the denial.
- (d) If the original EXP application was denied because it was incomplete and the applicant wishes to proceed under a EXP, the applicant shall submit a new application for an EXP that provides all of the required information.
- (e) If the original EXP application was denied because the proposed project did not comply with applicable requirements and the applicant wishes to proceed, the applicant shall file:
  - (1) An EXP application for a project that has been modified to conform to applicable requirements; or
  - (2) An application for a standard permit pursuant to Env-Wt 311.

Env-Wt 310.03 Conditions for EXPs. The following conditions shall apply to all work done pursuant to an EXP:

(a) No other work shall be done on the subject property pursuant to another EXP or an SPN for a period of 12 months from the date the EXP was issued unless the property owner submits information, including a plan, to demonstrate that:

- (1) The proposed work is wholly unrelated to and separate from the work already done under the EXP or SPN; and
- (2) The proposed work and the work already done under the EXP or SPN do not, when combined, constitute a project for which a standard permit is required; and

(b) The work shall comply with all applicable conditions specified in Env-Wt 307.

Env-Wt 310.04 Permit Required for Small Motor Mineral Dredging (SMMD).

(a) As required by RSA 482-A:3, XI(b), any person who wishes to engage in small motor mineral dredging shall obtain a permit from the department. The permit shall be obtained prior to engaging in any small motor mineral dredging.

(b) As provided in RSA 482-A:3, XI(a), small motor mineral dredging shall be limited to CAT1 projects that do not exceed the following limits:

- (1) Power equipment shall be limited to 5 horsepower;
- (2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle; and
- (3) Sluice and rocker boxes shall be limited to 10 square feet.

(c) As provided in RSA 482-A:3, XI(c), any person wishing to engage in mineral dredging that in any way exceeds the limits specified in (b), above, shall first obtain, in addition to a standard permit under Env-Wt 311, a mining permit from the department of natural and cultural resources pursuant to RSA 12-E.

(d) As required by RSA 482-A:3, XI(f), any person who has obtained a small motor mineral dredging permit from the department shall, prior to engaging in any small motor mineral dredging, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

Env-Wt 310.05 Notice Required for Panning.

(a) As provided in RSA 482-A:3, XI(b), any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department.

(b) For purposes of this section, “panning” means those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

(c) As required by RSA 482-A:3, XI(f), any person who intends to engage in any panning activity shall obtain prior written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

Env-Wt 310.06 Applications for SMMD Permits.

(a) To apply for a small motor mineral dredging permit, the applicant shall submit the following to the department on or with a “Small Motor Mineral Dredging” application, # NHDES-W-06-030:

- (1) The applicant’s name, mailing address, and email address or daytime telephone number;
- (2) The calendar year for which the application is being made;

- (3) Whether the applicant is a New Hampshire resident and if so, proof of New Hampshire residency as specified in (b), below;
  - (4) Proof of age as specified in (c), below, if New Hampshire residency is not claimed;
  - (5) A signed statement certifying that, in addition to the certifications specified in Env-Wt 311.11:
    - a. The applicant's intended activities do not exceed any of the limits established in RSA 482-A:3, XI(a), as restated in Env-Wt 310.04(b); and
    - b. The applicant has read and will comply with Env-Wt 307 relative to those conditions that apply to all activities and those that apply specifically to dredging activities;
  - (6) The location(s) where the dredging will occur; and
  - (7) A check or money order for the filing fee required by RSA 482-A:3, XI(h), currently \$25 for residents of the state of New Hampshire and \$50 for out-of-state applicants.
- (b) Any applicant claiming New Hampshire residency shall:
- (1) Provide a clear photocopy of his or her New Hampshire driver's license or New Hampshire non-driver ID; and
  - (2) Clearly print the license or ID number on the application.
- (c) If the applicant is not claiming New Hampshire residency, the applicant shall submit a clear photocopy of his or her driver's license, non-driver ID, or other documentation issued by a government entity that shows the applicant's date of birth or otherwise establishes that the applicant is 18 years old or older.
- Env-Wt 310.07 Submission to Municipality and Conservation Commission Review Not Required. As provided in RSA 482-A:3, XI(b):
- (a) An application for a small motor dredging permit shall be filed directly with the department; and
  - (b) The application shall not be subject to:
    - (1) The requirements of RSA 482-A:3, I relative to notice and fees; or
    - (2) The requirements of RSA 482-A:11, III relative to conservation commission intervention review.
- Env-Wt 310.08 Issuance of SMMD Permit.
- (a) The department shall issue a small motor mineral dredging permit to any individual who:
    - (1) Submits a complete application as specified in Env-Wt 310.03(a); and
    - (2) Demonstrates that he or she is 18 years of age or older.
  - (b) Each individual 18 years of age or older who is participating in small motor mineral dredging shall have his or her own permit.
  - (c) Individuals who are 17 years of age or younger may participate in small motor mineral dredging only if accompanied by an individual who possesses a valid small motor mineral dredging permit.
  - (d) As authorized by RSA 482-A:3, XI(e), the department shall include in the permit such conditions and restrictions on timing and location as are necessary to protect the public interest in the environment and wildlife protection. No small motor mineral dredging shall occur in a cold water fishery spawning or nursery area or protected species area.

(e) As provided in RSA 482-A:3, XI(b), any permit issued by the department for small motor mineral dredging shall expire at the end of the calendar year in which it is issued.

**Env-Wt 310.09 Post-Issuance Requirements for SMMD Permits.**

(a) Subject to (b), below, any individual operating under a small motor mineral dredging permit shall post the permit in the immediate vicinity of the dredging operation where it can be seen by anyone approaching the activity.

(b) If it is not practical to post the permit, the permittee shall have the original permit or a clear copy thereof available for inspection by anyone who requests to see it.

**PART Env-Wt 311 APPLICATIONS AND PROCEDURES FOR STANDARD PERMITS**

**Env-Wt 311.01 Pre-Application Preparation for All Projects.** Prior to finalizing the details of a proposed project for which a standard permit is needed, the applicant shall:<sup>3</sup>

(a) Have all jurisdictional areas delineated and classified by a certified wetland scientist, who also shall identify the predominant resource function of each jurisdictional area;

(b) Use the links provided in table 311-1 to identify protected species and habitat, designated rivers, prime wetlands, impaired waters, floodplains, and stream crossings on the subject property:

**Table 311-1: Data Screening Links**

<b>Resource</b>	<b>Link</b>
Designated rivers	<a href="http://nhdes.maps.arcgis.com/apps/webappviewer/index.html?id=d3869f998e614d81925481ac71c3903e">http://nhdes.maps.arcgis.com/apps/webappviewer/index.html?id=d3869f998e614d81925481ac71c3903e</a>
Floodplains	<a href="https://www.nh.gov/osi/planning/programs/fmp/maps.htm">https://www.nh.gov/osi/planning/programs/fmp/maps.htm</a>
Hydric Soils (see drainage class)	<a href="https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm">https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm</a>
Impaired waters	<a href="https://www.des.nh.gov/organization/divisions/water/wmb/section401/impaired_waters.htm">https://www.des.nh.gov/organization/divisions/water/wmb/section401/impaired_waters.htm</a>
Peatlands and marsh scrub shrub wetlands	<a href="http://www.wildlife.state.nh.us/wildlife/wap-using-maps.html">http://www.wildlife.state.nh.us/wildlife/wap-using-maps.html</a>
Prime wetlands	<a href="https://www.des.nh.gov/organization/divisions/water/wetlands/prime_wetlands.htm">https://www.des.nh.gov/organization/divisions/water/wetlands/prime_wetlands.htm</a>
Protected species and habitat	<a href="https://www2.des.state.nh.us/nhb_datacheck/">https://www2.des.state.nh.us/nhb_datacheck/</a>
Wildlife Action Plan	<a href="http://www.wildlife.state.nh.us/wildlife/wap-using-maps.html">http://www.wildlife.state.nh.us/wildlife/wap-using-maps.html</a>
Watershed size (for Stream Tier)	<a href="https://streamstats.usgs.gov/ss/">https://streamstats.usgs.gov/ss/</a>

(c) If the NHB DataCheck Tool identifies any areas of concern, determine how to avoid and minimize project-related impacts on the resource by coordinating with:

- (1) The NH fish and game department (NHF&G) for rare or protected animal species and habitat; and
- (2) The department of natural and cultural resources, natural heritage bureau (NHB) for protected plants or exemplary natural communities;

(d) If the proposed activity impacts very poorly drained soils or a special resource area, then:

<sup>3</sup> Consider making some of (or all of) this optional, with reduced review/decision time if is done.

- (1) Review and complete the standard application criteria and design requirements and provide any additional minimization and avoidance design features; or
- (2) Propose compensatory mitigation in accordance with Env Wt 800;
- (e) Consult with the local conservation commission, if any, by providing a draft copy of the application and plans to the local conservation commission at least 30 days prior filing an application with the department, and address any comments or concerns raised;
- (f) For work proposed within ¼ mile of the designated river corridor, consult with the LAC, if applicable, by providing a draft copy of the application and plans to the LAC at least 30 days prior filing an application with the department, and address any comments or concerns raised;
- (g) Review the requirements for establishing need as specified in Env-Wt 313.03; and
- (h) Ensure that impacts have been avoided and minimized to the greatest extent practicable, as specified in Env-Wt 313.04 and “Best Management Practices for Avoidance and Minimization...”, published by NEIWPC and dated 2018.

Env-Wt 311.02 Pre-Application Requirements for Projects Requiring Compensatory Mitigation. Prior to finalizing the details of a proposed project that is required by Env-Wt 313.04 to provide compensatory mitigation, the applicant shall:

- (a) Undertake the reviews and responses required by Env-Wt 311.01;
- (b) Evaluate permittee-responsible mitigation as defined in Env-Wt 802.05;
- (c) If permittee-responsible mitigation is not feasible, prepare:
  - (1) An explanation of what was considered and why preservation of an upland buffer as specified in Env-Wt 803.10(b) is not a feasible alternative;
  - (2) An explanation of what was considered and why restoration, enhancement, or creation of wetlands on the subject property as specified in Env-Wt 803.10(c) and Env-Wt 803.10(d) is not a feasible alternative; and
  - (3) A statement that an in-lieu mitigation payment that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28 is the chosen form of mitigation, with the amount to be calculated in accordance with RSA 482-A:30 or RSA 482-A:30-a, as applicable;
- (d) At least 30 days but not more than 90 days before submitting the application schedule and attend a pre-application meeting with the department to discuss the proposed project and all applicable requirements and to coordinate the review of the compensatory mitigation proposal;
- (e) Bring all information collected or otherwise prepared pursuant to Env-Wt 311.01 and (a)-(c), above, to the meeting; and
- (f) Provide the following information to the department at or prior to the meeting, as applicable to the type of mitigation proposed:
  - (1) The location of the proposed project site and whether the project is located in any area designated in the New Hampshire Fish & Game Department Wildlife Action Plan (WAP) as highest-ranked habitat based on ecological conditions;
  - (2) If the impact is to wetland resources, the wetland classification as identified on the national wetland inventory maps available from New Hampshire statewide geographic information system clearinghouse, NH GRANIT, accessible at <http://www.granit.unh.edu/>;



- (3) The location of the proposed mitigation project, including whether the project is located in any area designated in the WAP;
- (4) The type of compensatory mitigation proposed;
- (5) Aerial photographs of the proposed project site and compensatory mitigation site and surrounding areas, if available;
- (6) Historic information regarding the compensatory mitigation site, if available;
- (7) A brief narrative explaining the project impacts and how the proposed compensatory mitigation will offset the loss of functions and values of the wetlands that would be impacted by the project for which the permit is sought; and
- (8) An estimated date for submitting a complete mitigation proposal.

Env-Wt 311.03 Applications for Standard Permits.

(a) To apply for a standard permit, the applicant shall submit a complete application, as specified in (b), below, in accordance with RSA 482-A:3, I(a)(1).

(b) A complete application for a standard permit shall include the following:

- (1) A completed application form as specified in Env-Wt 311.04, dated, signed, and certified as specified in Env-Wt 311.11;
- (2) The correct fee, determined as specified in RSA 482-A:3, I(b) or (c), as applicable, subject to any cap established by RSA 482-A:3, X;
- (3) The results of the actions required by Env-Wt 311.01(b);
- (4) The project plans described in Env-Wt 311.05;
- (5) The maps and other attachments specified in Env-Wt 311.06;
- (6) An explanation of how the avoidance and minimization requirements of Env-Wt 313.04 have been met, as specified in Env-Wt 311.07;
- (7) If applicable, the information regarding proposed compensatory mitigation specified in Env-Wt 311.08;
- (8) Any additional information specific to the type of resource as specified in Env-Wt 311.09;
- (9) A functional assessment of all wetlands on the project site as specified in Env-Wt 311.10;
- (10) Any additional project-specific information required by Env-Wt 500, Env-Wt 600, or Env-Wt 900, as applicable;
- (11) A list containing the name, mailing address, and tax map/lot number(s) of each abutter to the subject property; and
- (12) Copies of the postal receipts or other proof of receipt of the notices that are required by RSA 482-A:3, I(d).

Env-Wt 311.04 Application Information. The applicant shall provide the following information on the Wetlands Permit Application, document number NHDES-W-06-012, dated [date]:

.... [applicant/agent name & address/contact info, project location, etc. - to be added later]

Env-Wt 311.05 Required Project Plans.

(a) The applicant shall provide the following information on one or more plan sheets that conform to (c), below:

- (1) The name of the applicant, and if the applicant has not yet acquired an enforceable proprietary interest in the property, each owner of the subject property as of the date the application is prepared;
- (2) The tax map, block, unit, and lot number of each parcel in the subject property;
- (3) The date each plan was originally prepared and the date of each revision, if any;
- (4) The name and professional license number of the individual responsible for each portion of the plan, such as the wetland delineation, the survey, and the engineering;
- (5) An overview of the property and proposed impact areas in relation to property lines;
- (6) All existing and proposed easement boundaries, including drainage and maintenance access easements, in relation to the property lines;
- (7) Roadway stations shown every 100 feet;
- (8) Any impacts proposed to a right of way over another's land;
- (9) The footprint and vertical dimensions of each existing structure, each proposed structure, and all other relevant features necessary to clearly define the project;
- (10) A labeled north-pointing arrow that points true north to indicate orientation;
- (11) A legend that clearly identifies all symbols, line types, and shading used on the plan;
- (12) The location of jurisdictional areas delineated in accordance with Env-Wt 406, and whether any have been designated as prime wetlands in accordance with RSA 482-A:15;
- (13) The name and professional license number of the individual responsible for the delineation of jurisdictional areas, including but not limited to wetlands, streams, vernal pools, and top of bank, on the property, if other than the individual identified as being responsible for the plan pursuant to (4), above;
- (14) All shorelines and surface waters on or within 100 feet of the subject property and, if applicable, all coastal features as described in Env-Wt 6XX including but not limited to all sand dunes and all areas within 100 feet of the highest observable tideline;
- (15) The location of the 100-year floodplain, if on or within 100 feet of the subject property;
- (16) If the topography is to be permanently altered, existing and proposed final contours at intervals not greater than 2 feet in all areas to be disturbed and within 250 feet thereof, and a reference elevation referenced to the North American Datum of 1983 (NAD 83) or its successor;
- (17) Labeled and lightly shaded or stippled areas indicating limits of all temporary and permanent impacts in jurisdictional areas;
- (18) Proposed methods of erosion, siltation, sedimentation, and turbidity control and management, indicated graphically and labeled with the type of control and the contractor responsible for monitoring the controls if known at the time of the application;
- (19) If the project proposes the subdivision of land, the location of all proposed lot lines on one or more plans stamped by a land surveyor or a professional engineer licensed pursuant to RSA 310-A;

**NOTE:** All cross-references subject to verification.

- (20) If the project involves construction of vegetative stabilization, bioengineering, rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Env-Wt 500 or Env-Wt 600, as applicable; and
- (21) All information necessary to clearly delineate and describe the project, including any project-specific information specified in Env-Wt 500 or Env-Wt 600, as applicable.
- (b) Plans depicting wetland boundaries that are submitted with an application for a standard permit shall:
- (1) Show the location of any wetland delineation observation plots if required by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, or the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, US Army Corps of Engineers, 2012;
  - (2) Show the location of the individual wetland boundary flags or other markings, as located by a NH licensed land surveyor;
  - (3) Be stamped by the NH-licensed land surveyor who located the flags or other markings;
  - (4) If prepared by a certified wetlands scientist, be stamped by the certified wetlands scientist who prepared the plan(s) or who oversaw the wetland boundary delineation if done by an apprentice or an associate who is not a certified wetlands scientist;
  - (5) If not prepared by a certified wetlands scientist, be accompanied by a report that includes an existing conditions plan that has been prepared and stamped by a certified wetlands scientist;
  - (6) If prepared by a homeowner acting on his or her own behalf for the development of the homeowner's primary residence, be signed by the homeowner in accordance with Env-Wt 311.11;
  - (7) Include notes that specify:
    - a. The date(s) the wetland boundary flags or other markings were placed on the site;
    - b. The date(s) on which the wetlands delineation was performed;
    - c. The method of delineation; and
    - d. The location of any wetland delineation observation plots identified pursuant to (1), above; and
  - (8) Be accompanied by:
    - a. A report of existing conditions, if the jurisdictional areas have not been disturbed; or
    - b. US Army Corps of Engineers data sheets, if disturbed conditions exist.
- (c) Each plan sheet shall:
- (1) Include a title block in the lower right-hand corner that contains:
    - a. The information specified in (a)(1)-(3), above; and
    - b. The scale of the plan as specified in (3), below, with a graphical scale bar;
  - (2) Be white paper that is either 8.5 x 11 inches or 22 x 34 inches;
  - (3) Be at a scale of one inch equals 50 feet for subdivisions, otherwise at a scale of one inch equals 400 feet or a scale that provides greater detail;
  - (4) Be numbered consecutively and include an index sheet if more than one sheet; and
  - (5) If on paper that is larger than 8.5 inches by 11 inches, be folded to that size with the title block facing up.

Env-Wt 311.06 Maps and Other Attachments. The applicant shall submit the following with the completed application form:

(a) A copy or tracing of a town tax map showing the subject property, the location of the project on the property, and the location of properties of abutters with each lot labeled with the name and mailing address of the abutter;

(b) Dated, labeled photographs that:

(1) Clearly depict:

- a. All jurisdictional areas, including but not limited to portions of wetland, shoreline, or surface water where impacts have or are proposed to occur; and
- b. All existing structures; and

(2) Are mounted on 8.5 x 11 inch sheets;

(c) A copy of the appropriate US geological survey (USGS) map at a scale of one inch equals 2,000 feet showing the location of the subject property and proposed project;

(d) A narrative that describes the work sequence, including pre-construction through post-construction, and the relative timing and progression of all work; and

(e) For all projects identified in Env Wt 600, a copy of the recorded deed with book and page numbers for the property;

(f) If the applicant is not the owner in fee of the subject property, documentation of the applicant's legal interest in the subject property.

Env-Wt 311.07 Avoidance and Minimization Narrative.

(a) The applicant shall submit with the application a written narrative that explains how all probable impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Env-Wt 313.04(a).

(b) The explanation required by (a), above, shall include the following:

(1) Whether the primary purpose of the proposed project is water-dependent or requires access through wetlands to reach a buildable lot or portion thereof;

(2) For commercial development, whether any other properties reasonably available to the applicant, whether already owned or controlled by the applicant or not, could be used to achieve the project's purpose without altering the functions and values of any jurisdictional area, in particular wetlands, streams, and special resource areas;

(3) Whether alternative designs or techniques, such as different layouts, different construction sequencing, or alternative technologies could be used to avoid impacts to jurisdictional areas or their functions and values on the subject property or on other property that is reasonably available to the applicant; and

(4) Whether the feasible alternatives that would not alter the functions and values of any jurisdictional area on the subject property or on property that is reasonably available, if incorporated in the proposed project, would adversely affect public health, public safety, or the environment.

Env-Wt 311.08 Required Information for Projects with Compensatory Mitigation. For any project for which compensatory mitigation is required, the applicant shall submit the following as part of the application:

(a) The type of compensatory mitigation to be proposed by the applicant and, if permittee-responsible mitigation will be proposed, the following preliminary information:

- (1) If preservation of an upland buffer is being proposed as compensatory mitigation:
  - a. A draft baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area; and
  - b. A summary of the conservation values and goals for the proposed preservation area that will be incorporated into the final conservation easement;
- (2) If wetland restoration, enhancement, or creation is being proposed as compensatory mitigation, a draft plan noting the location of the project and a summary of the proposed measures to achieve wetland restoration, enhancement, or creation; and
- (3) If restoration or enhancement of a stream is being proposed as compensatory mitigation, a draft plan showing the location of the project and a summary of the proposed measures to achieve stream restoration or enhancement; or

(b) A complete mitigation proposal as specified in Env-Wt 312.04.

Env-Wt 311.09 Required Resource-Specific Information.

(a) For projects in tidal areas, the applicant also shall submit the project-specific information required by Env-Wt 600, including but not limited to the datum and jurisdictional limits specified therein.

(b) For projects affecting non-tidal surface water shoreline, the applicant also shall submit the following:

- (1) The general shape of the shoreline including the length of frontage and the full water body elevation;
- (2) The footprint of all existing and proposed structures on the property;
- (3) The intended use of each proposed structure; and
- (4) The distance from existing and proposed work to abutting property lines.

(c) For projects within the protected shoreline as defined by RSA 483-B, the applicant also shall provide the following:

- (1) The reference line;
- (2) The location of all existing structures between the primary building line and the reference line;
- (3) The location of all proposed structures;
- (4) For projects adjacent to tidal waters, the landward limit of the 100-foot tidal buffer zone; and
- (5) The total disturbed area within the protected shoreline.

(d) For all stream crossing projects, the applicant also shall submit the information specified in Env-Wt 903.



Env-Wt 311.10 Functional Assessment.

- (a) The functional assessment required by Env-Wt 311.03(b)(8) for non-tidal wetlands shall be:
  - (1) Performed by a certified wetland scientist; and
  - (2) Completed using one of the following methods, both available as noted in Appendix B:
    - a. “Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire”, UNH Cooperative Extension, December 2015 (NH Method); or
    - b. US Army Corps of Engineers New England District Highway Method Workbook Supplement, 1999 edition (1999 ACE W/B Supplement).
- (b) The functional assessment required by Env-Wt 311.03(b)(8) for tidal areas shall be:
  - (1) Performed by a certified wetland scientist who has knowledge and experience in evaluating tidal wetlands; and
  - (2) Completed as specified in Env-Wt 600.
- (c) For any project that would impact jurisdictional areas having significant wetland functions or that would impact a special resource area, the applicant shall:
  - (1) Use the results of the functional assessment to select the location of the proposed project having the least impact to wetlands functions;
  - (2) Design the proposed project to have the least impact to wetlands functions;
  - (3) Where impact to wetland functions is unavoidable, to limit the project impacts to the least valuable functions on the site, avoiding and minimizing impacts to the highest and most valuable functions; and
  - (4) Include on-site minimization measures and construction management practices to protect aquatic resource functions.
- (d) For projects requiring a standard permit without mitigation, the applicant shall submit a wetland evaluation report that includes evaluation sheets and information demonstrating the relative functional value of each wetland evaluated.

Env-Wt 311.11 Required Signatures and Certifications. Any notice, registration, or application required to be filed under this chapter shall be signed, dated, and certified as follows:

- (a) If the applicant is an individual, the applicant shall sign and date the application;
- (b) If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the application shall sign and date the application and print or type his or her name and title on the application;
- (c) If the applicant has an authorized agent, the authorized agent also shall sign and date the application and print or type his or her name and title on the application;
- (d) Each signature provided pursuant to (a)-(c), above, shall constitute certification by the signer that:
  - (1) To the best of the signer’s knowledge and belief, all required notifications have been provided;
  - (2) The information submitted on or with the application is true, complete, and not misleading to the best of the signer’s knowledge and belief; and

(3) The signer understands that:

a. The submission of false, incomplete, or misleading information constitutes grounds for the department to:

1. Deny the application;
2. Revoke any approval that is granted based on the information;
3. If the signer is a certified wetlands scientist, licensed surveyor, or professional engineer licensed to practice in New Hampshire, refer the matter to the joint board of licensure and certification established by RSA 310-A:1; and

b. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641; and

(e) Each signature provided pursuant to (a) or (b), above, shall constitute authorization for the municipal conservation commission and the department to inspect the site of the proposed project.

Env-Wt 311.12 After-the-Fact Applications.

(a) In addition to all information required by Env-Wq 311.03, an after-the-fact application shall include the following:

- (1) A current conditions plan that clearly identifies all disturbances and construction performed without a permit, delineated as specified in Chapter 5 of the Army Corps Regional Supplement;
- (2) Copies of aerial photographs and other information to document the basis for the delineation;
- (3) A restoration plan for all impacted jurisdictional areas to be restored, prepared by a certified wetlands scientist;
- (4) A monitoring plan designed to ensure that the restoration is successful; and
- (5) An explanation as to why work was performed prior to having a permit.

(b) Applications received after work is completed shall be subjected to the same review as any other application.

(c) The department's acceptance of an after-the-fact application shall not in any way preclude or limit the exercise of any enforcement authority conferred by law on the department, the attorney general, or any other federal, state, or local authority.

Env-Wt 311.13 Amendments to Applications.

(a) Subject to (b), below, an applicant may amend the application by submitting the information required by Env-Wt 311.03 for the revised project prior to the department's issuance of a final decision on the application. The applicant shall provide notice to each person to whom notice of the original application was sent prior to filing the amended application with the department.

(b) As established in RSA 482-A:3, XIV(e), the following shall require a new application, not an amendment to an existing application:

- (1) A change in the proposed acreage of the permitted fill or dredge area by 20% or more;
- (2) A relocation of the proposed footprint of the proposed fill or dredge area; and
- (3) Any revision that includes:
  - a. A prime wetland or surface water of the state;

- b. A wetland of a different classification; or
- c. Non-wetland areas requiring permits for filling and dredging.

## PART Env-Wt 312 STANDARD PERMIT APPLICATION PROCESSING AND REVIEW

### Env-Wt 312.01 Identification of Applications; Retention of Files.

(a) Upon receipt of a complete application, the department shall assign a file number and maintain a file on each application.

(b) The department shall retain files as specified in Env-Wt 103.01.

### Env-Wt 312.02 Administrative Completeness Determination.

(a) Upon receipt of an application, the department shall:

- (1) Determine whether the application is administratively complete; and
- (2) Proceed in accordance with RSA 482-A:3, XIV(a)(1), as reprinted in Appendix 2.

(b) An application shall be determined to be administratively complete if:

- (1) The application form required by Env-Wt 311.03(b)(1) is complete and signed as required;
- (2) The correct fee is submitted with the application; and
- (3) The application package contains all information, plans, maps, and other attachments required by Env-Wt 311.03(b)(3)-(12), as applicable.

### Env-Wt 312.03 Completeness Determination of Compensatory Mitigation Proposals.

(a) If the applicant submits preliminary information pursuant to Env-Wt 310.08(a), the department shall review the information to determine whether the information is sufficient for the department to understand the nature and appropriateness of the proposed mitigation.

(b) If the applicant submits a complete mitigation proposal pursuant to Env-Wt 311.08(b) and Env-Wt 312.04, the department shall review the information to ensure the minimum necessary compensatory mitigation components are included for technical review of the project.

(c) The department shall notify the applicant in writing of its determination under (a) or (b), above, as applicable. If the information does not meet the standard specified in (a) or (b), above, as applicable, the written notice shall specify the reason(s).

Env-Wt 312.04 Complete Mitigation Proposal Components. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed a complete mitigation proposal:

(a) Where preservation of an upland buffer is being proposed, information showing that the proposal meets the criteria specified in Env-Wt 804 together with the following:

- (1) A final baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area;
- (2) A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership which protects the conservation values in perpetuity, in accordance with Env-Wt 808.14;

- (3) A surveyed plan, in accordance with Env-Wt 808.11, showing the location of the proposed conservation area boundaries; and
  - (4) A statement from the proposed grantee indicating that the proposed grantee will accept the easement or fee simple deed;
- (b) For any proposal calling for a transfer of easements or fee simple ownership, documentation showing that the proposed grantee is one of the following:
- (1) A state natural resource agency such as the fish and game department or the department of resources and economic development;
  - (2) A municipality with a conservation commission in the town where the property is located; or
  - (3) A conservation organization such as a state-wide, regional, or local conservation organization that can provide documentation from the United States Internal Revenue Service stating that it is an income tax exempt, publicly supported corporation, pursuant to 501(c)(3) of the United States Internal Revenue Code;
- (c) For any proposal calling for a transfer of easements or fee simple ownership to a conservation organization, documentation showing that the conservation organization has:
- (1) Accepted the Land Trust Alliance (LTA) standards and practices as specified in “LTA Standards and Practices”, revised 2004, or adopted equivalent standards and practices; or
  - (2) A record of holding easements and managing them in a manner that is consistent with the purposes of the easements;
- (d) Where restoration, enhancement, or creation is being proposed as compensatory mitigation, information showing that the proposal meets the criteria specified in Env-Wt 805 or Env-Wt 806, as applicable, together with all required plans and proposals; and
- (e) For an applicant who has determined that permittee-responsible mitigation is not feasible as specified in Env-Wt **???.??**, the information required by Env-Wt **???.??** and a preliminary estimate of the in-lieu mitigation payment.

Env-Wt 312.05 Technical Review.

- (a) Once an application has been determined to be administratively complete, the department shall proceed with its technical review of the application as specified in RSA 482-A:3, XIV(a)(2)-(5), reprinted in Appendix D.
- (b) If the information submitted as part of the application is not sufficient for the department to determine that the criteria for issuing a permit specified in Env-Wt 313.01 are met, the department shall notify the applicant as specified in RSA 482-A:3, XIV(a)(2)-(5), reprinted in Appendix D.

PART Env-Wt 313 PROCEDURES AND CRITERIA FOR STANDARD PERMIT DECISIONS

Env-Wt 313.01 Criteria for Approving Standard Permit Applications.

- (a) The department shall not approve an application for a standard permit and issue the permit unless:
- (1) The applicant has met the burden of showing need as specified in Env-Wt 313.03;
  - (2) The applicant has met the requirements to avoid, minimize, and mitigate as specified in Env-Wt 313.04 and as subject to (c), below;
  - (3) All applicable conditions specified in Env-Wt 307 have been acknowledged;

(4) Any resource-specific criteria established in Env-Wt 400, Env-Wt 600, Env-Wt 700, or Env-Wt 900 have been met;

(5) Any project-specific criteria established in Env-Wt 500, Env-Wt 600, or Env-Wt 900 have been met; and

(6) The applicant has demonstrated that neither the work covered by the permit nor the resulting structure or conditions will have an unreasonable adverse impact on the ability of abutting owners to enjoy and use their properties.

(b) Unless a waiver is granted under Env-Wt 203, the department shall not grant a permit if the project proposes to place fill in a jurisdictional area to achieve a set-back established in Env-Wq 1000 or in local ordinance between the jurisdictional area and the effluent disposal area of an individual sewage disposal system.

(c) The requirements to avoid and minimize shall not be deemed to be met if:

(1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;

(2) The project would cause or contribute to:

a. The significant degradation of waters of the state; or

b. The loss of any special resource areas or high value wetland functions or impact to high value waters; or

(3) The project will cause random or unnecessary destruction of wetlands.

(c) The department shall deny an application if it is unable to determine that the criteria for issuing a permit as stated in (a), above, have been met.

(d) If the application is denied, the department shall notify the applicant in writing of the denial and identify the reason(s) for the denial.

#### Env-Wt 313.02 Permit Issuance; Permit Conditions.

(a) Subject to (b), below, if an application for a standard permit is approved, the department shall issue the permit to the named applicant provided the named applicant has an enforceable proprietary interest in the property.

(b) If the application is for a major project located in a great pond or public-owned water body, the department shall:

(1) Submit the proposed permit to the governor and executive council as required by RSA 482-A:3, II(a); and

(2) Proceed as directed in RSA 482-A:3, II(b) after such review.

(c) The issued permit shall include such conditions in the permit, including but not limited to time limits, as are required to ensure that the project's impacts are minimized.

(d) The conditions in the permit shall apply in addition to the applicable conditions in Env-Wt 307.

#### Env-Wt 313.03 Demonstration of Need for Impacts to Jurisdictional Areas.

(a) The department shall not approve any alteration of any jurisdictional areas unless the applicant has demonstrated the need, as described in (f), below, for the proposed impacts to such areas.



(b) There shall be a presumption that there is no need for any impacts to the following jurisdictional areas:

- (1) Salt marshes and other tidal wetlands, due to their high productivity and rarity and the difficulty in restoring the functions and values of such areas, and due to the ability of the tidal buffer area to enhance habitat values in the adjoining tidal wetland and to protect tidal environments from potential sources of pollution;
- (2) Bogs and fresh water marshes, due to the rarity of such areas and the difficulty in restoring the functions and values of such areas; and
- (3) Other special resource areas, due to their high value and public benefit, and the difficulty in restoring the functions and values of such areas.

(c) There shall be a presumption that there is no need for any impact to surface waters, except for:

- (1) The limited right of a shoreline property owner to wharf out or to stabilize the property's shoreline;
- (2) The need to cross a stream that is not a special resource to access developable upland; and
- (3) A request proposed, sponsored, or administered by the New Hampshire department of transportation as provided in RSA 482-A:3, I-a.

(d) To overcome the presumption established in (b) or (c), above, the applicant shall demonstrate need, as described in (f), below, by clear and convincing evidence.

(e) In areas not covered by the presumption established in (b) or (c), above, the applicant shall demonstrate need, as described in (f), below, by a preponderance of the evidence.

(f) Need for the proposed impact shall be found only if the applicant demonstrates that:

- (1) No less-impacting alternative for using the subject property exists that:
  - a. Is consistent with applicable zoning and planning requirements;
  - b. Allows the applicant a reasonable use of the subject property; and
  - c. Is practicable; and
- (2) Either:
  - a. The proposed impacts are consistent with the interests of the public as described in RSA 482-A:1 and would provide no degradation or loss of any part of a wetland or jurisdictional area that would be incompatible with the public health and welfare; or
  - b. To the extent the proposed impacts are not consistent with the interests of the public as described in RSA 482-A:1, the public benefit of the proposed project outweighs the detriment to be caused to the interests of the public as described in RSA 482-A:1.

(g) In determining whether either of the criteria stated in (f)(2) is met, the applicant shall address, and the department shall consider:

- (1) The size of the proposed impacts to jurisdictional areas, including the surface area of the wetlands that will be impacted if applicable;
- (2) The type and classification of the jurisdictional areas proposed to be impacted;
- (3) The rarity of the jurisdictional areas proposed to be impacted;
- (4) The relationship of the jurisdictional areas proposed to be impacted to nearby wetlands and surface waters;

- (5) The extent to which the jurisdictional areas:
  - a. Contribute to flood control or pollution mitigation, or both;
  - b. Serve as a habitat, reproduction area, or source of nutrients for finfish, crustacea, shellfish, and wildlife;
  - c. Support public commerce, recreation, navigation, and aesthetic enjoyment; and
  - d. Contribute to maintaining groundwater quality and quantity; and
- (6) The cumulative impact that would result if all persons owning or abutting a portion of the affected jurisdictional area were also allowed to alter the jurisdictional area in proportion to the extent of their property rights.

Env-Wt 313.04 Avoidance, Minimization, and Mitigation.

- (a) The department shall not approve any alteration of any jurisdictional area unless the applicant:
  - (1) First, demonstrates that the potential impacts to jurisdictional areas have been avoided to the maximum extent practicable as specified in Env-Wt 313.05 and [BMPs for A/M]; and
  - (2) Second, any unavoidable impacts have been minimized; and
  - (3) Third, after all avoidance and minimization measures have been addressed and if required by (b), below, submits a proposal for compensatory mitigation that meets the requirements of Env-Wt 800 for all permanent impacts that will remain after avoidance and minimization as described in (1), above.
- (b) The applicant shall submit a compensatory mitigation proposal unless:
  - (1) There is no impact, within a jurisdictional area, to a special resource area as defined in Env-Wt 100;
  - (2) The total project impacts less than 10,000 sq. ft. of non-tidal wetlands or less than the threshold for tidal wetlands established in Env-Wt 600; and
  - (3) The overall project:
    - a. Is limited to bank stabilization using rip-rap, bio-engineering methods, or other bank stabilization techniques to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
    - b. Is limited to the installation of an accessory docking structure or the construction of a new or replacement shoreline structure or breakwater, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all shoreline structures on the frontage is less than 2,000 SF; or
    - c. Involves the construction of a pond classified as a CAT1 or CAT2 project in Env-Wt 5??, either alone or in combination with other qualifying criteria.
- (c) Mitigation shall not be required for impacts that are not intended to remain after the project is completed, provided the areas are restored in accordance with provisions shown in the approved project plans.

Env-Wt 313.05 Standard Permit Application Evaluation. For any project that requires a standard permit, the department shall not approve any alteration of any jurisdictional area unless the applicant demonstrates that each of the following has been avoided or minimized as required by Env-Wt 313.04:

- (a) Adverse impacts on plants, fish, and wildlife and their habitats, including but not limited to:

- (1) Rare, special concern species;
  - (2) Special resource areas;
  - (3) Species at the extremities of their ranges;
  - (4) Migratory fish and wildlife; and
  - (5) Vernal pools;
- (b) Interference with the aesthetic interests of the general public, meaning that where an applicant proposes construction in an area that is visible to the public, the materials to be used and the overall size of the project shall be in keeping with the general aesthetics of the community;
- (c) Interference with, or obstruction of, the right of the public to passage or access, whether for public commerce, navigation, or recreation;
- (d) Adverse impacts on abutters' property rights, including the value and enjoyment of their property as provided in RSA 482-A:11, II;
- (e) The extent to which a project that is located in surface waters reflects or redirects current or wave energy that might cause damage or hazards;
- (f) Adverse impacts of the proposed project on the functions and values of the overall jurisdictional area, the overall wetland complex, and the associated native plant community;
- (g) Adverse impacts on the value of sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;
- (h) Adverse impacts on the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, or national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and
- (i) The degree to which a project redirects water from one watershed to another;
- (j) Whether the project would displace floodwaters from floodplain wetlands or other areas known to flood onto adjacent properties;
- (k) Whether the project proposes stormwater treatment or detention in wetlands or surface waters or would contribute additional loading to impaired waters such that the surface water quality standards established in RSA 485-A or Env-Wq 1700 would not be met; and
- (l) Whether the project is designed to maintain wetland and stream hydrological connectivity, aquatic organism passage, and plant community features necessary to retain or restore wetland and aquatic resource functions.

PART Env-Wt 314 PERMIT ACCEPTANCE, RECORDATION, DURATION, EXTENSION, AND  
TRANSFER; POST-ISSUANCE REQUIREMENTS

Env-Wt 314.01 Acceptance of Standard Permit. A standard permit shall:

- (a) Be signed by the permittee and the principal contractor who will build or install the project prior to start of construction; and
- (b) Not be valid until signed as required by (a), above.

Env-Wt 314.02 Recordation of Certain Permits and Deed Restrictions.

- (a) As required by RSA 482-A:3, VI:

(1) The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under RSA 482-A for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots; and

(2) The permit shall not be effective until so recorded.

(b) For projects in the coastal area, the permittee shall record any permit issued for overwater structures, shoreline stabilization, and any work in the tidal buffer zone, tidal wetlands, or sand dunes at the registry of deeds in the county in which the property is located. Any limitations or conditions in the permit so recorded shall run with the land beyond the expiration of the permit.

(c) The permittee shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.

(d) Upon receipt of a permit for a major docking structure in public waters, the permittee shall file a deed restriction with the appropriate registry of deeds to limit the use of the docking structure to permitted conditions and to dedicate the required amount of shore frontage to that structure.

(e) The permittee shall provide a copy of the recorded deed restriction to the department.

Env-Wt 314.03 Notification Required Prior to Initiating Construction.

(a) The permittee shall notify the department in writing at least one week prior to commencing any work under the permit.

(b) The project shall be constructed in accordance with the approved plans and specifications.

Env-Wt 314.04 Permit Duration.

(a) As specified in RSA 482-A:3, XIV-a(a), a permit shall be valid for 5 years except as specified in (b) through (e), below.

(b) As specified in RSA 482-A:3, XIV-a(b), a permit issued to repair or replace shoreline structures to maintain the integrity and safety of such structures including, but not limited to docks, sea walls, breakwaters, riprap, access ramps and stairs, that are damaged by storms or ice, shall expire 10 years from the date the permit was issued as long as any work performed after the initial permitted work complies with the following:

(1) The work is not in violation of the original permit or RSA 482-A:3, XIV-a(a)(1)-(4);

(2) All structures are repaired or replaced to the original permitted location and configuration; and

(3) All significant work is reported to the department in accordance with the reporting requirements for the original permit.

(c) Public transportation projects that exceed the limits of the SPGP shall receive one permit extension, to a total of 10 years, provided the permittee:

(1) Receives an individual federal permit from the US Army Corps of Engineers; and

(2) Requests such an extension in writing from the department prior to the expiration of the original permit.

(d) As specified in RSA 482-A:3, V(a), a minimum impact forestry notification submitted as specified in RSA 482-A:3, V shall be valid for 2 years from date of the completeness letter issued by the department; and

(e) As specified in RSA 482-A:3, XI, a permit for small motor mineral dredging issued in accordance with RSA 482-A:3, XI shall expire at the end of the calendar year in which it is issued.

Env-Wt 314.05 Permit Extensions.

- (a) As specified in RSA 482-A:3, XIV-a(a), a permittee may request an extension of a permit.
- (b) To make the request, the permittee shall submit a written request to the department prior to the expiration of the permit.
- (c) The request submitted pursuant to (b), above, shall include the following:
  - (1) The length of the requested extension, not to exceed 5 years; and
  - (2) A statement, signed and certified in accordance with Env-Wt 311.11, that:
    - a. The permit for which extension is sought has not been revoked or suspended without reinstatement;
    - b. Extension of the permit would not violate a condition of law or rule;
    - c. The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit; and
    - d. The applicant proposes reasonable mitigation measures to protect the public waters of the state from deterioration during the period of extension.
- (d) As specified in RSA 482-A:3, XIV-a(a), the department shall grant one extension of up to 5 additional years, provided:
  - (1) The permittee has submitted the request as specified in (b) and (c), above; and
  - (2) The mitigation measures proposed by the permittee are adequate to protect public waters from deterioration.

Env-Wt 314.06 Permit Transfers.

- (a) For any project that has not been completed when ownership or legal authority to undertake the project is to be transferred, either the transferor or the transferee may initiate a transfer of the permit.
- (b) To effect a transfer, the person initiating the transfer shall submit a written request to the department that contains:
  - (1) The name, mailing address, and daytime telephone number of the transferee and, if available, an email address for the transferee;
  - (2) The name and other identifying information of the transferor as shown on the permit;
  - (3) The permit number and date; and
  - (4) The date on which the transfer is expected to occur or did occur.
- (c) Subject to (d), below, the request submitted pursuant to (b), above, shall be signed and certified by the transferor and the transferee.
- (d) If the transferor is no longer available to sign the request, the transferee shall submit a copy of the legal documentation that effected the transfer.
- (e) The department shall transfer the permit after receipt of a request as specified in (b), above, unless:

**NOTE:** All cross-references subject to verification.



(1) An enforcement action is pending against the transferor or transferee, unless transferring the permit would facilitate a resolution of the action; or

(2) The department has a reasonable basis to believe that grounds exist to suspend or revoke the permit due to non-compliance with the permit terms, unless transferring the permit would facilitate compliance.

(f) If the transfer is approved, the new permittee shall be advised of all conditions, limitations, and special considerations pertinent to the approved project.

(g) The department shall submit to the governor and executive council any request for the transfer of a permit for a CAT3 project that involves structures in great ponds or public-owned water bodies in the manner prescribed for permits under RSA 482-A:3, II.

#### Env-Wt 314.07 Permit Amendments.

(a) Subject to (b), below, a permittee may request an amendment to an issued permit by submitting the information required by Env-Wt 311.03 for the revised project. The applicant shall provide notice to all who received notice of the original application prior to filing the amended application with the department.

(b) As established in RSA 482-A:3, XIV(e), the following shall require a new application, not an amendment to an existing permit:

- (1) A change in the proposed acreage of the permitted fill or dredge area by 20% or more;
- (2) A relocation of the proposed footprint of the proposed fill or dredge area; and
- (3) Any revision that includes:
  - a. A prime wetland or surface water of the state;
  - b. A wetland of a different classification; or
  - c. Non-wetland areas requiring permits for filling and dredging.

#### Env-Wt 314.08 Notice of Completion and Certificate of Compliance Required.

(a) The permittee shall file a completed notice of completion and certificate of compliance with the department within 10 working days of completing the work authorized by the permit.

(b) The notice of completion and certificate of compliance shall:

- (1) Identify the permit number and the date of permit issuance;
- (2) Specify the date the work was completed; and
- (3) Be signed and certified by the permittee as specified in Env-Wt 311.11.

(c) In addition to the certifications in Env-Wt 311.11, the permittee's signature also shall constitute certification that the project was completed in compliance with all conditions of the permit.

### PART Env-Wt 315 PROCEDURES TO ADDRESS EMERGENCIES

#### Env-Wt 315.01 Emergency Authorizations.

(a) A property owner may request an authorization to act on an emergency basis pursuant to this section in lieu of filing an application under Env-Wt 311 if:

- (1) A threat to public safety or public health exists or significant damage to private property is imminent as a result of an occurrence beyond the control of the property owner, such as a natural disaster;
  - (2) The request for the emergency authorization is made within one week of discovering the need for the emergency authorization; and
  - (3) The work covered by the emergency authorization is limited to temporary stabilization of the property or other mitigation of the immediate threat, such as placing temporary rip-rap to stabilize a bank.
- (b) The property owner or property owner's agent shall request an emergency authorization by providing the following information to the department by telephone, e-mail, or fax:
- (1) The name and daytime telephone number of the individual requesting the authorization, and, if available, an e-mail address and fax number for that individual;
  - (2) A description of the reason the emergency authorization is being requested; and
  - (3) A description of the work to be performed and a schedule for the work.
- (c) If a request is made by telephone, the property owner or property owner's agent shall provide the information required by (b), above, by e-mail or fax as soon as possible but no later than 24 hours after the initial request.
- (d) The department shall issue an emergency authorization requested as specified in (a)-(c), above, when necessary to mitigate an immediate threat to public health or safety or to private property.
- (e) The work done pursuant to an emergency authorization shall be limited to temporary stabilization of the site or other mitigation of the immediate threat.
- (f) The department shall create a record of each authorization that includes a description of the emergency, the work to be performed, and a schedule for the work.

Env-Wt 315.02 Work During Emergencies Without Prior Authorization.

- (a) Subject to (b), below, work without a permit or an emergency authorization shall be allowed during a natural disaster if the work is:
- (1) Initiated and completed during the natural disaster; and
  - (2) Strictly limited to that work necessary to mitigate an immediate threat or stabilize a property.
- (b) If work is done pursuant to (a), above, the owner of the property where such work occurred, or the property owner's agent, shall report the following information to the department as soon as practicable but no later than 30 days after commencing the work:
- (1) The name and daytime telephone number of the individual reporting the information, and, if available, an e-mail address and fax number for that individual;
  - (2) A description of the need for the work done on an emergency basis; and
  - (3) A description of what work was done and when the work began and was completed.

Env-Wt 315.03 Action After Emergency. Any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended shall be undertaken pursuant to a statutory exemption, SPN, LSA, standard permit, or waiver.

## PART Env-Wt 316 PERMIT SUSPENSION, REVOCATION, OR MODIFICATION

Env-Wt 316.01 Purpose. The purpose of this part is to establish the criteria and procedures for suspending, revoking, or modifying an approval issued under RSA 482-A or a waiver issued under the wetlands rules.

Env-Wt 316.02 Definition. For purposes of this part, “approval” means an SPN, LSA, EXP, standard permit, or waiver, as applicable to the specific situation.

Env-Wt 316.03 Suspension or Revocation of Approvals.

(a) The department shall initiate a proceeding to suspend or revoke an approval whenever the department:

- (1) Receives credible information that supports a conclusion that the work being done under the approval does not comply with the terms of the approval and all other applicable requirements; and
- (2) Concludes that the department’s attempts to obtain compliance by other means have not been successful, subject to (b), below.

(b) If the work being done poses an immediate and substantial threat to the environment or to public health or safety, the department shall not be required to attempt to obtain compliance by other means.

(c) To initiate the proceeding, the department shall notify the owner of the property on which the work is occurring and the person(s) doing the work, if known to the department, in writing of:

- (1) The intention to suspend or revoke the approval, as applicable;
- (2) The facts on which the proposed action is based; and
- (3) The deadline for requesting a hearing to show cause why the proposed action should not be taken.

(d) If a hearing is requested, the hearing shall be conducted in accordance with the provisions of RSA 541-A and Env-C 200 that apply to adjudicative proceedings.

(e) After the hearing, if one is held, or after the deadline for requesting a hearing if a request is not received, the department shall:

- (1) Revoke the approval, if the department determines that:
  - a. The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
  - b. The project for which the approval was obtained cannot be made to conform to applicable requirements; or
- (2) Suspend the permit, if the department determines that:
  - a. The permit would not have been issued if the information submitted had been true, complete, and not misleading; and
  - b. The project for which the approval was obtained can be made to conform to applicable requirements.

(f) If an approval is suspended pursuant to (d)(2), above, the department shall reinstate the approval upon receiving proof from the respondent that the project meets all applicable requirements.

Env-Wt 316.04 Modification of Approvals. The department shall issue a modified permit if it determines, as a result of a hearing conducted pursuant to Env-Wt 316.03, that:

(a) A modification to the approval is necessary or desirable to bring the project into compliance with applicable requirements; and

(b) The modified approval meets all applicable criteria for issuance and does not constitute a significant amendment as defined in RSA 482-A:XIV(e).

Env-Wt 316.05 Notice of Decisions; Appeals.

(a) The department shall notify the respondent in writing of its decision. If the decision is to suspend, revoke, or modify the approval, the department shall specify the reason(s) for the decision.

(b) Any person aggrieved by the decision who wishes to appeal the decision shall file an appeal with the Wetlands Council as specified in accordance with RSA 21-O:14 and Env-WtC 200.

#### APPENDIX A: STATE STATUTES IMPLEMENTED

[TO BE INSERTED]

#### APPENDIX B: INCORPORATED REFERENCES

Rule (Env-Wt)	Name (Date)	Available from
307.15(b)(2)	NH Best Management Practices for Erosion Control on Timber Harvesting Operations (2016)	UNH Cooperative Extension <a href="https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf">https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf</a>
309.05	Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire (2017)	NH Department of Transportation
311.01(h) 313.04(a)(1)	BMPs for Avoidance, Minimization (date)	[publisher]
311.05(b)(1)	Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, US Army Corps of Engineers, 2012;	<a href="http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/NCNE_supp2.pdf">http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/NCNE_supp2.pdf</a>
311.10(a)(2)a.	Method for Inventorying and Evaluating Fresh Water Wetlands in NH (2015)	UNH Cooperative Extension NHMethod.org
311.10(a)(2)b.	Highway Method Workbook Supplement, 1999 edition	US Army Corps of Engineers New England District

#### APPENDIX C: STATUTORY DEFINITIONS

[none in this chapter]

**NOTE:** All cross-references subject to verification.

**APPENDIX D: OTHER STATUTORY PROVISIONS****RSA 482-A:3:**

I. ...

(d) At the time the applicant files the application with the department, the applicant shall provide written notice of the proposed project to:

(1) All abutters, as defined in the rules of the department, unless exempted in such rules, which shall be provided by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The department shall have no obligation to verify the identity of abutters or their receipt of notice. Any abutter who has actual notice of the filing of an application shall have no cause to challenge the application based on failure to receive written notice. Nothing in this subparagraph shall prevent the department from taking appropriate action in the event an applicant fails to provide the required notice or provides false information.

(2) The local river management advisory committee if the project is within a river corridor as defined in RSA 483:4, XVIII, or a river segment designated in RSA 483:15. Such notice shall be sent by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The local river management advisory committee shall, under RSA 483:8-a, III(a)-(b), advise the commissioner and consider and comment on the permit application.

...

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:

(1) Within 14 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 14-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.

(2) Within 75 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 105 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department may grant an extension of this 60-day time period upon request of the applicant.

(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

- (A) Approve the application, in whole or in part, and issue a permit; or
- (B) Deny the application and issue written findings in support of the denial; or
- (C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or



(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 75 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 105 days for all others:

- (A) Approve the application, in whole or in part, and issue a permit; or
- (B) Deny the application and issue written findings in support of the denial; or
- (C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(5) Where the department has held a public hearing on an application filed under this chapter, within 60 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

#### **APPENDIX E: STATUTORY PERMITS BY NOTIFICATION CONDITIONS**

##### **RSA 482-A:3:**

IV-a. Temporary seasonal docks installed on any lake or pond shall be exempt from the permitting requirements of this section, provided that a notification is sent to the department by the owner of property that includes the name and address of the property owner, the municipality, the waterbody, and tax map and lot number on which the proposed dock will be located. To qualify for an exemption under this paragraph, a temporary seasonal dock shall be:

- (a) The only docking structure on the frontage;
- (b) Constructed to be removed during the non-boating season;
- (c) Removed from the lake bed for a minimum of 5 months of each year;
- (d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;
- (e) No more than 6 feet wide and no more than 40 feet long if the water body is 1,000 acres or larger, or no more than 30 feet long if the water body is less than 1,000 acres;
- (f) Located on a parcel of land that has 75 feet or more of shoreline frontage;
- (g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
- (h) Installed in a manner which requires no modification, regrading, or recontouring of the shoreline, such as installation of a concrete pad for construction of a hinged dock;
- (i) Installed in a manner which complies with RSA 483-B; and
- (j) Installed in a location that is not in, or adjacent to, an area that has been designated as a prime wetland in accordance with RSA 482-A:15.

V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of resources and economic development, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner. Minimum impact notifications issued by the department shall be valid for 2 years.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of property owner;
- (2) Name and address of logger or forester;
- (3) Town, tax map, number and lot number of job site; and
- (4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of resources and economic development, or their agents, to enter the property for determining compliance with this chapter.

(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.

XI. (b) ... Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of resources and economic development shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of organization constructing or maintaining the recreational trail.
- (2) Name and address of property owner.
- (3) Town, tax map number, and lot number of property.
- (4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

XV. (a) Utility providers who maintain and repair existing utility services within existing rights of way under the Best Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire published by the department of resources and economic development, and who have complied with subparagraphs (b)-(e) shall satisfy the permitting requirements of this section, including any portion located in or adjacent to a prime wetland, for minimum impact activities as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include the following information:

- (1) The name and address of the person, employed by the utility provider responsible for overseeing the maintenance.
- (2) A brief written description of the nature of the work to be conducted.
- (3) A copy of the appropriate United States Geological Survey topographic map with the locations of the projects indicated.

(c) Appropriate notice to the town clerk of each municipality in which work will occur shall include the name of a utility provider contact and a brief description of the work to be conducted.

(d) A one-time annual filing fee of \$200 per town, not to exceed a maximum of \$10,000, shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(e) No additional fee shall be required for amendments to the notification as long as additional towns are not included in the amendment. Additional towns included in the amendment shall be subject to an additional fee of \$200 per town, not to exceed the annual maximum under subparagraph (d).

XVI. (a) Except as provided in paragraph XVII, any person or political subdivision that repairs or replaces culverts or stream crossing structures in accordance with the best management practices for routine roadway maintenance in New Hampshire published by the department of transportation, including culverts up to and including 48 inches in diameter or the functional hydraulic equivalent, and files an appropriate notice under

subparagraph (b), shall satisfy the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include a completed routine roadway notification form as outlined in rules adopted by the commissioner pursuant to RSA 541-A including, at a minimum, the following information:

- (1) Name and mailing address of the applicant or authorized person.
  - (2) Name and mailing address of the applicant or authorized agent, if any, representing the political subdivision.
  - (3) Telephone number, and email address and fax number if available.
  - (4) A copy of the appropriate United States Geological Survey topographic map at its original scale on 8 1/2 x 11 sheets with the project locations clearly labeled.
  - (5) Town tax map, number, and lot number, if any, of the project sites.
  - (6) Project location including street name and address or distance from the nearest intersection to the project.
  - (7) Information regarding the existing and proposed structure shown on plan sheets or equivalent plans as shown in the best management practices for routine roadway manual and a listing of the best management practices to be used during construction.
  - (8) Color photographs depicting the proposed work sites showing existing structures, surrounding land, and jurisdictional areas in and adjacent to the work location.
  - (9) A signed certification that information is accurate and correct and that work will conform to the best management practices for routine roadway maintenance.
- (c) Appropriate notice to the department under subparagraphs (a) and (b) shall be mailed and received by department at least 5 days prior to the start of construction.